IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 568 of 2004
To
FIRST APPEAL No. 578 of 2004
with
FIRST APPEAL NOS 664 to 677 of 2004
with
FIRST APPEAL NOS 1182 TO 1192 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
THE HON'BLE MR.JUSTICE M.C.PATEL

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SPL.LAQ OFFICER & 2 - Petitioner(s)

Versus

ISHWARBHAI AMBALAL PATEL - Respondent(s)

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Appearance :

MR SIRAJ GORI, AGP for Petitioner No(s).: 1,2.
MR AJ PATEL for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
THE HON'BLE MR.JUSTICE M.C.PATEL

Date : 29/06/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

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1. Heard learned Counsel for the parties Shri Siraj Gori, learned AGP for the Appellant Special Land Acquisition Officer in all these matters and learned Counsel Shri A.J. Patel for the respondents – claimants.

2. First Appeal Nos.568 to 580 of 2004 are filed by the appellants – Special Land

Acquisition Officer and the Executive Engineer challenging the impugned common Judgment and Award dated 12.1.2001 passed by Shri S.J.Sheth, Extra Assistant Judge, Mehsana in Land Acquisition Reference Nos.2344 to 2357 of 1996, whereby the learned Reference Court awarded additional sum of Rs.15.83 ps. Per sq.mtr to the respondents – claimants, in addition to Rs.2.17 ps per sq.mtr awarded by the Land Acquisition Officer to the respondents – claimants. Thus, in all Rs.18/- per sq.mtr was awarded by the Reference Court against the claim of Rs.30/- per sq.mtr of the claim in reference cases. Aggrieved by not allowing their Reference cases fully the claimants have filed Cross First Appeal Nos.664 to 677 of 2004 through learned Counsel Shri A.J.Patel. In all these cases Notification u/s.4 of the Land Acquisition Act was published on 5.3.1994 whereby the land of the respondents – claimants of village Zaloda, Taluka Kadi were acquired for the purpose of Narmada Canal.

3. First Appeals No. 1182 to 1192 of 2005 are filed by the Special Land Acquisition Officer against the impugned common Judgment and Award dated 15.7.2002 passed by Shri M.S.Shaikh, Extra Assistant Judge, Mehsana in Land Acquisition Reference Nos.2333 to 2343 of 1996 whereby the Reference Court awarded additional sum of Rs.25.83 ps per sq.mtr in addition to Rs.2.17 ps per sq.mtr, already awarded by the Land Acquisition Officer to the respondents – claimants. Thus, in all Rs.28/- per sq.mtr was awarded by the Reference Court against the claim of Rs.30/- per sq.mtr of the respondents – claimants in Reference Cases. Notification u/s.4 of the Land Acquisition Act came to be issued on 20.4.1993 i.e almost one year prior to the notification u/s.4 issued in earlier cases i.e First Appeal Nos.568 to 580 of 2004 and First Appeal Nos. 664 to 677 of 2004, the land of the respondents – claimants of this very village Zaloda were acquired for the purpose of Narmada Canal.

4. It may be stated that Shri S.J.Sheth, learned Extra Assistant Judge, Mehsana, passed his impugned common Judgment and Award on 12.1.2001 wherein Notification u/s.4 was issued on 5.3.1994. Though it was prior in point of time, for some or the other

reason it was not brought to the notice of Shri M.S.Shaikh, Extra Assistant Judge, Mehsana, who passed his impugned common Judgment and Award dated 15.7.2002 awarding in all Rs.28/- per sq.mtr for the notification issued on 20.4.1993 for the land of this very village Zaloda. Relying on the previous Judgment of the Reference Court for the Ambaliyara and Medh Adraj villages. Shri M.S.Shaikh, has awarded in all Rs.28/- per sq.mtr on the basis that there was a common boundary of village Ambaliyara and Zaloda whereas, according to Shri Sheth, there was distance of about 10 k.mtr. Thus, there is clear ambiguity in two Judgments delivered by two different Judges for this very village Zaloda. Except the year of notification there is no difference. In one case the notification was issued on 20.4.1993, whereas in another case notification u/s.4 was issued on 5.3.1994.

5. Under the circumstances of the case learned AGP Shri Gori for the Special Land Acquisition Officer, in all these Appeals, submitted that the best course is to remand all the matters to the Reference Court for its correct adjudication. Learned Counsel Shri A.J.Patel, on peculiar facts and circumstances of the case, straightway conceded to this and submitted that, without making any observation on the merits of the case, all the matters be remanded to the Reference Court for its fresh decision in accordance with law by giving an opportunity to all the respective parties to lead specific and clear-cut evidence regarding the actual distance between the land of Ambaliyara and Medh Adraj and this village Zaloda acquired by the Authority.

6. In view of the above, the impugned common Judgment and Award dated 12.1.2001 passed by Shri S.J.Sheth, learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Nos.2344 to 2357 of 1996 and the impugned common Judgment and Award dated 15.7.2002 passed by Shri M.S.Shaikh, learned Extra Assistant Judge, Mehsana, in Land Acquisition Reference Nos.2333 to 2343 of 1996 are hereby quashed and set aside and the matters are remitted to the Reference Court, for its fresh decision. On remand the parties will be at liberty to lead additional evidence, including the evidence

on the point of exact distance between the land of village Zaloda, Ambliyara and Medh Adraj. It is hope and trust that the Reference Court shall try to decide all the cases as early as possible, not later than 31.12.2005, provided all the parties fully cooperate. It is hope and trust that no party shall ask for any unnecessary adjournment and the Reference Court shall see to it that unnecessary adjournment is avoided and the matters are decided as early as possible, preferably on or before 31.12.2005.

7. Accordingly all Appeals are disposed of.

8. Writ to be sent down forthwith.

(B.J.SHETHNA, J.)

(M.C. PATEL, J.)

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